UNITED
NATIONS

CCPR

International covenant on civil and political rights

Distr.
GENERAL

CCPR/C/SR.1790
24 January 2000

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Sixty-seventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1790th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 21 October 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

CONTENTS

GENERAL COMMENTS OF THE COMMITTEE (continued)

Draft general comment on article 3 of the Covenant (continued)

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Fourth periodic report of Morocco (continued)

* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1790/Add.1

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E. 4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.15 p.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 7) (continued) (CCPR/C/65/R.10)

Draft general comment on article 3 of the Covenant (continued)

1. The CHAIRPERSON reminded the Committee that it had already adopted paragraphs 1-12 of its draft general comment on article 3 (CCPR/C/65/R.10). The amended paragraphs had been distributed under the same symbol, in English only. The Committee should therefore resume consideration of the draft paragraph by paragraph.

Paragraph 13

2. Ms. EVATT, supported by Mr. BHAGWATI, proposed that, at the end of the second sentence, the words "when litigating against their husbands" should be replaced by "in family law matters". The sentence would thus read: "and any measures taken to ensure women the possibility of access to legal aid in family law matters".

3. The proposal was adopted.

4. Mr. POCAR suggested that in the first sentence the word "should" should be replaced by "shall", and that reference should be made to the right to a fair trial. The beginning of the paragraph would thus read: "Access to justice and the right to a fair trial should be provided by states...".

5. The proposal was adopted.

Paragraph 14

6. Mr. KRETZMER proposed that the second sentence, which referred to assessing "compliance by States with article 16", should be deleted. That would be offset by a slight drafting amendment to beginning of the paragraph, where the reference to article 16 would be placed ("The right of every human being to be considered a legal person, as protected by article 16...").

7. Ms. EVATT supported that proposal, and further suggested that, in the first sentence, the world "usually" should be replaced by "frequently" ("who frequently see it curtailed...").

8. The two proposals were adopted.

Paragraph 15

9. The CHAIRPERSON recalled that the reference to access to contraceptives and sterilization or abortion in the third sentence had been moved to paragraph 8; that sentence would thus end with the words "such as having a certain number of children or being of a certain age". The Committee had taken the view that impossibility of access to contraceptives and forced sterilization or abortion constituted treatment covered by article 17 of the Covenant.

10. Ms. CHANET said she regretted the way in which the paragraph was worded since the Committee did not clearly define the practices which it denounced and on which it expected States to report. Thus, it affirmed in that paragraph that it had been "made aware" of laws and practices in certain States and gave some examples, without indicating whether or not it denounced them.

11. Mr. KRETZMER proposed that for the sake of consistency, the first sentence should be amended to say that in certain States laws and practices enabled women's private lives to be taken into consideration, without saying that the "Committee has been made aware [of that]".

12. Ms. EVATT said that, in the period since the draft general comment had been drawn up, the Committee had learned of other issues relating to that paragraph, such as the practice of subjecting women to pregnancy tests before they were hired.

13. Mr. HENKIN said he did not understand the thrust of the paragraph since, as it was currently worded, the Committee adopted no position on the practices cited in it. In other paragraphs, the Committee clearly expressed a value judgement; it did not do that in paragraph 15 even though it would undoubtedly be desirable.

14. Ms. EVATT said that in that general comment the Committee explained what it expected of State party reports while at the same time affirming that certain practices raised issues and that the Committee did not therefore adopt a position on those practices. The reader must be encouraged to report on such practices. The Committee might simply state that "issues relating to article 17 also arose in connection with women's privacy, for example when they could not be sterilized without the husband's authorization".

15. Mr. KRETZMER said he too thought that the way in which the Committee drafted all it general comments was somewhat ambiguous, since the chief objective sought was to ensure that States parties gave information in their reports and thereby enable the Committee to assess their compliance with the provisions of the Covenant. For that reason, it had happened that the Committee avoided taking a position on a particular issue in a general comment so as to be sure of having the information it needed in order to gain an idea of compliance with the Covenant's provisions. That was precisely the case with the draft under consideration.

16. Mr. YALDEN agreed with Mr. Henkin that the Committee must state clearly whether it disapproved of the practices cited in paragraph 15, especially since in other paragraphs of the same text it had not avoided taking a position.

17. Mr. LALLAH pointed out that the Committee did not have sufficient knowledge of the practices referred to in that paragraph and, in any event, had not had the opportunity to discuss them. Thus, the question of the obligation to obtain the spouse's authorization in order to be sterilized might equally well arise in the case of the man. That was an example of points on which the Committee did not have the necessary jurisprudence to be able to take a position.

18. Mr. BHAGWATI shared Mr. Lallah's view and emphasized that a distinction must be drawn between issues on which the Committee had expressed an opinion at some point in its deliberations and issues that might be debatable. The situations cited in paragraph 15 fell into the second category and so the Committee should not pass judgement of them at the current stage.

19. Mr. SCHEININ felt that it would be advisable to strengthen the normative character of the paragraph. In addition, he considered that the imposition of heavier penalties for the rape of a "chaste" or married woman involved not the right to privacy, but rather social or marital status.

20. Mr. SOLARI YRIGOYEN noted that the second sentence of the paragraph was of a clearly normative character, which was unwarranted. The general comment related to equality between men and women, and one could very well imagine a situation in which a man could not by law be sterilized without the woman's authorization. Consequently, further thought must be given to the question in order to place the rights of men and women firmly on an equal footing.

21. Mr. KRETZMER pointed out that the purpose of the Committee's general comments was not so much to describe possible but theoretical situations, as to cite cases of which it had learned during the consideration of communications or periodic reports. However, the Committee had never encountered the case of a State which made it compulsory for a man to obtain his wife's authorization in order to be sterilized. The Committee could therefore describe the situation as it stood, but that did not mean that the rule must be different for men and for women. As to Mr. Scheinin's proposal, he did not think that the situation referred to in the first sentence related to recognition of social or marital status. Imposing a lighter penalty for rape if the woman was not a virgin was clearly an unacceptable infringement of privacy.

22. Mr. POCAR, Mr. ANDO, Mr. LALLAH and Ms. CHANET considered that paragraph 15 as a whole required further thought and requested that its consideration should be deferred.

23. The CHAIRPERSON noted that the Committee was not ready to adopt paragraph 15 in its present from and without further debate, and decided to postpone its consideration.

The meeting was suspended at 4 p.m. and resumed at 4.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Fourth periodic report of Morocco (continued) (CCPR/C/115/Add.1; CCPR/C/67/L/MOR)

24. At the invitation of the Chairperson, the members of the Moroccan delegation resumed their places at the Committee table.

25. The CHAIRPERSON invited the Committee to resume consideration of Morocco's fourth periodic report and gave the floor to the Moroccan delegation to reply to the oral questions asked by members of the Committee.

26. Mr. LIDIDI (Morocco), replying to a question on freedom of expression, said that the right to freedom of expression was a principle embodied in the Moroccan Constitution and applied in practice. The exercise of that right was, however, subject to certain limits compatible with the Covenant; their purpose was respect for the rights and reputation of others, and the safeguarding of national security, public order, and public health and morals. A clear distinction should be drawn between matters relating to exercise of the right of criticism and of participation in political life, on the one hand, and to insults and defamation, on the other. In Morocco, that distinction was left to the discretion of judges.

27. As to the number of infringements of the legislation governing freedom of expression, he said that only one magazine editor was currently in detention, but he had been sentenced for acts other than the unauthorized publication of information. Generally speaking, offences against press legislation could not be regarded as in flagrant offences, and did not lead to police custody or pre-trial detention. Furthermore, in the light of the amendment of press legislation and the various reforms already effected, four seminars on the freedom for information had been organized and had been attended by representatives of all press organs and other media. It had emerged from the seminar that there was a need for a "higher information council" and, until such time as it was established, the Government had appointed an inter-ministerial committee, presided over by the Prime Minister, to draft a bill that was consistent with the relevant international instruments and took into account all political and trade union views. The Advisory Council on Human Rights had instructed one of its working groups to consider the bill and make recommendations on it.

28. Replying to the question about the employment and remuneration of detainees, he said that such persons were allowed to exercise the right to work with the aim of promoting their reintegration in society. The law required that detainees should be fairly remunerated, the amount of remuneration being fixed by a joint decision of the Ministry of Justice and the Ministry of Finance. The employment of detainees in activities within the private sector was authorized, under contract, provided that the firm concerned participated in the reintegration effort or the detainee performed charity work. More generally, the authorities were endeavouring to ensure that detainees received a minimum remuneration and to offer them all guarantees enjoyed by free citizens employed under contract.

29. There were two ways of settling disputes relating to severance of an employment contract: reference to a labour court and arbitration or judicial proceedings. Morocco had opted for the latter course, while at the same time providing for a series of guarantees, such as making the procedure free of charge for the employee, the right to official legal aid, etc. However, since the court proceedings were often long, the case could be settled through conciliation, but that method was in no way binding.

30. A question had been asked about possible penalties for persons who resigned from their job or office. The law did not provide for any penalty for employees or officials who tendered their resignation. Judicial decisions relating to labour law had, however, established that resignations were sometimes of a forcible nature and recourse to the courts was therefore available to challenge the acceptance of a resignation, and to seek reinstatement or compensation for the employee or official concerned. In the civil service, any resignation must be accepted but, in certain cases, for example, if the official had been in receipt of a scholarship or training grant, he was obliged to repay the relevant amounts to the State.

31. On the question of freedom of belief, he stated that everything that was not forbidden by law was authorized. Generally speaking, in order to constitute an offence an act must be categorized as such by law. As to offences relating to questions of belief, the relevant legislation applied to all beliefs, whatever they might be.

32. In reply to a question about the legal guarantees accompanying the dissolution of an association by administrative decision, complaints on the grounds of abusive or unlawful dissolution were dealt with by the administrative tribunals. The text of the new press law also contained provisions on that question.

33. Some members of the Committee had asked about the reason for the slowness with which the new Constitutional Council took its decisions. It should be remembered that the old Constitutional Council had been set up under the previous Constitution, at a time when Parliament had consisted of only one chamber. The constitutional reform of 1996 and the establishment of a bicameral Parliament had necessitated a legislative amendment, which had taken a certain amount of time. The members of the new Constitutional Council had been appointed in June 1999, and the Council had already begun its work and adopted decisions, notably on electoral matters.

34. Mr. BELMAHI (Morocco) added that the text of the new press code had reached an advanced stage. The Ministry for Human Rights had previously initiated discussions with all NGOs dealing with human rights, the four human rights associations which existed in Morocco and the national press trade union. The results of those discussions had been taken into consideration in the formulation of the new text.

35. Clarification had been sought concerning article 90 of the Electoral Code, which provided for prosecution proceedings in the event of the spreading of false reports, slanderous rumours or other fraudulent acts. The purpose of that provision was to prohibit and punish any attempt to distort the democratic process, which must be honest, transparent and fair. The Electoral Code had been formulated and approved in a climate of consensus and with the approval of all players in Moroccan political life.

36. Mr. BENJELLOUN-TOUIMI (Morocco) said he hoped that his delegation had thus provided all necessary clarification and assured the members of the Committee that his country's authorities would take into consideration the comments and recommendations they had made. His delegation had provided practical information and statistical data which were of value not only for the consideration of periodic reports by the United Nations treaty bodies, but also for the assessment, by the Moroccan authorities, of the situation in the country with regard to human rights, health, the economy, etc. At present, Morocco lacked statistics and the means of compiling them, but the authorities firmly intended to develop capacities in that area.

37. The CHAIRPERSON welcomed the fact that the Moroccan State was aware of needs in the area of human rights, but noted that many problems remained. Thus, the Committee reaffirmed that, since human rights were universal, the delay in the holding of the referendum in Western Sahara could not but be a source of concern to it. It noted with satisfaction that Morocco recognized the precedence of international treaties over national enactments, but regretted that such recognition did not carry with it the logical consequences that might be expected, given that, in certain respects, Moroccan legislation was at variance with the Covenant.

38. The question of missing persons was of great concern to the Committee. At no point was it mentioned in the report, even though article 6 of the Covenant proclaimed that "Every human being has the inherent right to life". Until such time as a missing person was found, the problem remained. In that respect, international law had clearly evolved in recent years. Thus, certain organizations, notably in Latin America, considered that the disappearance of individuals was tantamount to a crime and that it was the responsibility of States to make inquiries in order to find out everything possible about the missing persons. Morocco should endeavour to rapidly remedy the situation. As a Latin American, she was well aware that it was impossible to turn over a new leaf until the situation had been clarified.

39. The Committee congratulated Morocco on having adopted a national plan for the integration of women in the country's political, economic and social life. However, the report contained no information on the implementation of article 3 of the Covenant relating to the equality of rights for men and women. In that respect, it was surprising that Morocco, which had entered no reservation to articles 3 and 23 of the Covenant, should have made a reservation to the Convention on the Elimination of All Forms of Discrimination against Women. She noted that, in that connection, there was a clear incompatibility between the Moroccan legislation and the provisions of the Covenant.

40. With regard to article 9 (freedom and security of the person) and article 14 (judicial guarantees) of the Covenant, she noted that Act No. 67/90 had amended a number of provisions of the Code of Criminal Procedure, notably article 68, and that under the amended text of that article police custody could be extended in cases involving State security. However, that provision was manifestly at variance with article 9 of the Covenant. Moreover, questions arose about the independence of the judges, which appeared to be far from fully guaranteed, and it would undoubtedly be useful to establish an independent body to exercise general supervision over the implementation of all human rights.

41. On the question of freedom of expression, she noted that the information given in paragraphs 152-156 of the report did not establish that Morocco fully respected article 19 of the Covenant. She also wondered about the procedures whereby the competent authorities determined that information was "inaccurate". Similarly, she noted with concern that "Any publication likely to disrupt public order may be seized by the authorities". Serious questions also arose concerning religious freedom in Morocco, where the existence of a State religion could have consequences for other religions. In addition, there seemed to be a discrepancy between the provisions of article 25 of the Covenant and the provisions of the Moroccan Constitution, which accorded considerable powers to the King.

42. The Committee looked forward to learning that the promised reforms in Morocco had been carried out and hoped that the Committee's observations would be taken into account.

43. Mr. BENJELLOUN-TOUIMI (Morocco) said that his country would continue the efforts already undertaken to reform legislation in various spheres and that the Committee's concluding observations would certainly help to make Moroccan laws more compatible with international law.

The public part of the meeting rose at 4.45 p.m.